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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,903	07/03/2003	Shuji Aoyagi	239551US3CONT	3632
22850	7590	04/13/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			WILSON, JOHN J	
		ART UNIT	PAPER NUMBER	
		3732		

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/611,903	AOYAGI ET AL.	
Period for Reply	Examiner	Art Unit	
	John J. Wilson	3732	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>03 July 2003</u> .			
2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
Disposition of Claims			
4) <input checked="" type="checkbox"/> Claim(s) <u>1</u> is/are pending in the application.			
4a) Of the above claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>1</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
Application Papers			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input checked="" type="checkbox"/> The drawing(s) filed on <u>03 July 2003</u> is/are: a) <input checked="" type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.			
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).			
11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.			
Priority under 35 U.S.C. § 119			
12) <input checked="" type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).			
a) <input checked="" type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:			
1. <input type="checkbox"/> Certified copies of the priority documents have been received.			
2. <input checked="" type="checkbox"/> Certified copies of the priority documents have been received in Application No. <u>09/851,132</u> .			
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
* See the attached detailed Office action for a list of the certified copies not received.			
Attachment(s)			
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)			
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)			
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/3/03, 10/2/03</u> .			
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____			
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)			
6) <input type="checkbox"/> Other: _____			

DETAILED ACTION***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made..

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann (3684136) in view of Magnusson et al (5370221) and Osanai et al (5026283). Baumann shows a capsule, Fig. 5, main cylindrical body 51, powder 6, mixing chamber as shown, sealed liquid container 32 and plunger 52, column 8, lines 25-29. Baumann shows a projection at 53, however, does not show a protrusion that breaks the seal. Osanai shows a protrusion 2e. It would be obvious to one of ordinary skill in the art to modify the above combination to include a protrusion as shown by Osanai in order to better break the seal to mix the components. The above combination does not show a filter located in a passage connecting a nozzle to the mixing compartment. Magnusson teaches using an air permeable filter 90 located as shown in the drawings. It would be obvious to one of ordinary skill in the art to modify the above combination to include a filter as shown by Magnusson in order to seal the chamber while allowing air to pass.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,682,347 in view of Magnusson et al (5370221). The 347' claims do not show a filter located in a passage connecting a nozzle to the mixing compartment. Magnusson teaches using an air permeable filter 90 located as shown in the drawings. It would be obvious to one of ordinary skill in the art to modify the 347' claims to include a filter as shown by Magnusson in order to seal the chamber while allowing air to pass.

Drawings

The drawings filed July 3, 2003 have been found to be acceptable by the examiner.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Conclusion

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.



John J. Wilson
Primary Examiner
Art Unit 3732

jjw
April 9, 2004
Fax (703) 308-2708
Work Schedule: Monday through Friday, Flex Time